

No. 83-1706

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**In the Supreme Court of the United States**

OCTOBER TERM, 1983

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MARY L. WARDSWORTH, PETITIONER

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES  
IN OPPOSITION**

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## **MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

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Petitioner contends that the court of appeals erred in affirming the dismissal of her complaint under the Federal Tort Claims Act because she failed to file an administrative claim containing a "sum certain" within two years of her accident, as required by 28 U.S.C. 2401(b) and 28 C.F.R. 14.2(a).<sup>1</sup>

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<sup>1</sup>28 U.S.C. 2401(b) provides in pertinent part:

A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues \* \* \*.

28 C.F.R. 14.2(a) provides (emphasis added):

For purposes of the provisions of 28 U.S.C. 2401(b) and 2672, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written

1. On November 9, 1979, petitioner apparently injured her back and hip when she slipped and fell inside of the South Park Station Post Office in Alexandria, Louisiana (Pet. App. 2a). In November 1981, within the two year statute of limitations period, petitioner filed a Standard Form 95 with the Postal Service seeking to recover for her personal injuries. Next to the question "AMOUNT OF CLAIM (in dollars)," she answered "contusion of hip" in the personal injury column and "unable to diagnosis" in the total damages claimed column (Pet. App. 2a-3a).

After being notified by the Postal Service that she had failed to complete Form 95 correctly, petitioner filed a new Form 95 on December 23, 1981, changing her answer in the personal injury column to "Injury to low back and left hip," and changing her answer in the total damages column to "\$65,000" (Pet. App. 26a). On March 16, 1982, the Postal Service finally denied petitioner's claim (*id.* at 21a-23a). The agency explained that it had no authority to pay the damages since petitioner had failed to submit a claim for a "sum certain" within two years of the accident, as required by 28 U.S.C. 2401(b) and 28 C.F.R. 14.2 (Pet. App. 21a-22a).

2. Petitioner then filed suit against the United States under the Tort Claims Act, 28 U.S.C. 1346(b) and 2671 *et seq.*, in the United States District Court for the Western District of Louisiana, seeking to recover for her personal injuries. The district court granted the government's motion to dismiss the complaint (Pet. App. 16a-20a). The court held first that petitioner had failed to apprise the Postal Service of her claim with the specificity required by 28 C.F.R. 14.2 (Pet. App. 15a-16a). Second, the court held that petitioner's December 1981 claim could not be deemed

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notification of an incident, accompanied by a claim for money damages in a *sum certain* for injury to or loss of property, personal injury or death alleged to have occurred by reason of the incident.

to relate back to the earlier claim, because to do so would frustrate the legislative intent to encourage prompt presentment of tort claims against the United States (*id.* at 18a).

The court of appeals affirmed (Pet. App. 1a-13a; 721 F.2d 503). The court of appeals agreed with the district court that petitioner's failure to include a "sum certain" in her initial claim for benefits mandated dismissal of her suit (Pet. App. 8a). The court also held that the subsequent filing outside the two year limitations period could not cure the jurisdictional defect (*id.* at 7a-8a).

3. Petitioner argues (Pet. 11-21) that failure to comply with the technical requirements of the Federal Tort Claims Act should not deprive parties of their day in court. Although she does not contest the validity of the "sum certain" requirement prescribed in 28 C.F.R. 14.2, petitioner contends that it should be liberally construed so as to preserve the rights of plaintiffs injured by the government's negligence, so long as they have put the government on notice of their claim (Pet. 11-16). Finally, she argues that the subsequent filing of a claim that included a specific damages amount should "relate back" to her initial filing and thus satisfy the "sum certain" requirement (Pet. 16-21). Petitioner's arguments do not warrant review by this Court.

a. The courts of appeals are in complete agreement that failure to satisfy the "sum certain" requirement in 28 C.F.R. 14.2 is jurisdictional. See, *e.g.*, *Keene Corp. v. United States*, 700 F.2d 836, 842 (2d Cir. 1983), cert. denied, No. 82-1836 (Oct. 3, 1983); *House v. Mine Safety Appliances Co.*, 573 F.2d 610 (9th Cir. 1978); *Allen v. United States*, 517 F.2d 1328 (6th Cir. 1975); *Melo v. United States*, 505 F.2d 1026 (8th Cir. 1974); *Bialowas v. United States*, 443 F.2d 1047 (3d Cir. 1971). See also *Warren v. U.S. Dep't of Interior Bureau of Land Management*, 724 F.2d 776, 780

(9th Cir. 1984) (en banc). As the court of appeals explained, the sum certain requirement independently "fulfills important statutory goals. It enables agency administrators to determine whether they have authority to settle claims under 28 U.S.C. Sec. 2672 and contributes to efficient handling of claims by agencies" (Pet. App. 12a). See *Adams v. United States*, 615 F.2d 284, 285-288 (5th Cir. 1980). Thus, notice of the mere existence of a claim is not sufficient to satisfy the regulatory purpose.

Nor is there any dispute that the November 1981 claim application petitioner submitted to the Postal Service failed to satisfy the "sum certain" requirement. Petitioner's ambiguous allegation that total damages amounted to "unable to diagnosis" wholly failed to apprise the agency of the claim's magnitude. The court of appeals, which recognized that it has construed the "sum certain" requirement liberally in other cases (Pet. App. 9a),<sup>2</sup> found no way to avoid the conclusion that petitioner had completely failed to put the agency on notice of the extent of her claim.

b. Nor is there any legal support for petitioner's "relation back" argument. Petitioner relies (Pet. 16-21) primarily on Fed. R. Civ. P. 15(c). But the Federal Rules of Civil Procedure apply only "in the United States district courts in all suits of a civil nature," Fed. R. Civ. P. 1, and therefore the relation back doctrine in Rule 15(c) has no application to an administrative agency's handling of a tort claim.

The Attorney General has adopted regulations that provide for amending administrative tort claims. 28 C.F.R. 14.2(c). But, consistent with the statute, amendment of a

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<sup>2</sup>See, e.g., *Martinez v. United States*, 728 F.2d 694 (5th Cir. 1984) (claim filed with sum certain specified as "in excess of \$100,000"); *Molinar v. United States*, 515 F.2d 246 (5th Cir. 1975) (claim with medical bills attached). See also *Erxleben v. United States*, 668 F.2d 268 (7th Cir. 1981).

claim after the two year limitations period is permitted only if the "claim presented [is] in compliance with paragraph (a) of this section," which requires that the claim include a sum certain for damages. See note 1, *supra*. Thus, there is no basis for allowing petitioner's later claim to relate back to the earlier filing.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE  
*Solicitor General*

JUNE 1984